

UNITED STATES DISTRICT COURT  
OF  
MASSACHUSETTS

PLAINTIFF,  
DAVID RIBEIRO, PRO SE.

v.

HOLYOKE POLICE DEPT.  
CITY OF HOLYOKE  
POLICE OFFICERS  
DEFENDANTS

U.S. DISTRICT COURT

CIVIL ACTION NO. 04-30201 MAP

MOTION FOR RECONSIDERATION  
TO INCLUDE DEFENDANT  
LT. MICHEAL HIGGINS  
IN THIS CIVIL ACTION

Now comes the plaintiff in the above entitled action and moves this honorable court with this motion to respond to Judge Ponser decision to exclude LT. Micheal Higgins as a defendant in the above action.

Judge Ponser decision was based on the belief that plaintiff did not file an opposition to defendants opposition.

Judge Ponser decision was dated 6-23-05.

Plaintiff has a copy of his opposition to defendants opposition enclosed in with this motion.

The plaintiff filed his opposition within the 20 day time limitation according to The Rules Of federal civil procedure.

The plaintiff filed his opposition after the plaintiff received the last opposition from the last attorney of the defendants.

1) The plaintiff is a pro se litigant and is learning by the day on the rules of Federal Civil Procedures.

The plaintiff understands that he must follow rules accordingly.

2) The plaintiff is asking the court to reconsider the exclusion of LT. Micheal Higgins as a defendant in this civil action.

3) The reason for this request is due to the magnitude of violation of constitutional rights that transpired against the plaintiff by LT. Micheal Higgins and his officers.

4) LT. Micheal Higgins claims he mirandized the plaintiff and that the plaintiff signed miranda warning card, and that the card was placed into evidence. The police report claims several times that the plaintiff was mirandized and plaintiff signed miranda warning card.

5) The plaintiff has a copy of said miranda card and it does not have the plaintiff signature on it.

6) The police also claim that plaintiff was allowed to use the telephone and the police report indicates a confirmed phone call was made by plaintiff.

7) The plaintiff was never allowed to use telephone even after plaintiff requested to do so. The plaintiff specifically asked to use a phone that was not a collect phone because the holding cell in police station only has a collect telephone.

8) The plaintiffs phone request was denied.

9) LT. Micheal Higgins also claims that plaintiff admitted to crime. The police have no signed statement or electronic recording of alleged confession. All the courts had was lying police officers and the judge at statement suppression hearing dated 2-17-05 allowed the alleged confession.

10) Ultimately, the plaintiff was railroaded by superior court judicial system and the plaintiffs own defense attorney. If the plaintiff had the money to hire private counsel, the plaintiff would have prevailed at his trial, especially a circumstantial case as the plaintiffs case was/is.

11) By the defendants not allowing the plaintiff to use the telephone is a constitutional violation of great significance.

According to state law the evidence obtained after a denying of a telephone right, should have been suppressed.

MASS. CRIMINAL PRACTICE, LAW #32 PAGE 20 SUBSECTION 26.  
PROCEDURES AFTER ARREST-TELEPHONE CALL:

"A PERSON HELD IN CUSTODY SHALL BE PERMITTED TO USE TELEPHONE AT HIS OWN EXPENSE. THIS USE IS FOR THE PURPOSE OF ALLOWING THE ARRESTED PERSON TO COMMUNICATE WITH FAMILY OR FRIENDS OR TO ENGAGE THE SERVICES OF AN ATTORNEY OR ARRANGE RELEASE ON BAIL." THE STATUTE REQUIRES THAT THE PERSON BE INFORMED OF HIS RIGHT TO USE PHONE UPON ARRIVAL AT SUCH STATION OR PLACE OF DETENTION." "SUCH USE SHALL BE PERMITTED WITHIN ONE HOUR THEREAFTER." "IF ARRESTED PERSON IS INTENTIONALLY DEPRIVED OF HIS RIGHT TO USE TELEPHONE, EVIDENCE OBTAINED AS A RESULT OF SUCH INTENTIONAL DEPRIVATION SHALL BE SUPPRESSED." TELEPHONE RIGHT VIOLATION, VIOLATES M.G.L.A 276 SUBSECTION 33A STATE DECLARATION OF RIGHTS.

12) Plaintiff told his attorney to inform the court of his phone right being violated, however, plaintiffs court appointed attorney did not inform the court of the violations and lies by police which transpired in plaintiffs criminal case.

13) The plaintiff knew his attorney was working with the prosecutors in the intentional railroading of the plaintiff.

This is when plaintiff filed a motion to terminate his counsel because of ineffectiveness, breaking attorney/client confidentiality, and violating plaintiffs constitutional right to effective assistance of competent defense counsel, and violating his code of ethics as an attorney and an employee of the commonwealth. Said motion was denied.

14) Plaintiff asked his court appointed attorney to impeach arresting officers at trial to expose their lies, but plaintiffs attorney was clearly not working in his clients best interest.

15) The victim at plaintiffs trial stated in his testimony that his perpetrator was five foot six inches tall and of dark brown complexion. The plaintiff is five foot ten inches tall and a lightly tanned latino. Plaintiffs attorney did not bring this discription discrepancy even after plaintiff asked him to do so. (To the court)

16) Plaintiffs attorney was suppose to file a motion to suppress evidence according to the law that says an attorney is ineffective if he fails to file said motion.

MASS CRIMINAL DEFENSE VOL.1 PRE-TRIAL AND DISTRICT COURT  
SUBSECTION 8.1C-3 CONDUCT THAT CONSTITUTES INEFFECTIVE  
ASSISTANCE OF COUSEL; 1) ABANDONING A DEFENSE IN CLOSING ARGUMENT  
OR COMMUNICATING DISBELIEF IN THE DEFENDANTS TESTIMONY OR CASE.  
2) FAILER TO PRESENT EVIDENCE PROMISED IN THE OPENING STATEMENT:  
BECAUSE SUCH CONDUCT IS GENERALLY SO DAMAGING IT IS PREJUDICIAL  
AS A MATTER OF LAW. 3) FAILURE TO WITHDRAW IN ORDER TO PROVIDE  
NECESSARY TESTIMONY. 4) FAILURE TO OBJECT TO INADMISSABLE DAMAGING  
EVIDENCE. 5) FAILURE TO OBJECT TO ERRONEOUS JURY INSTRUCTIONS.  
6) FAILURE TO FILE A MOTION TO SUPPRESS.

POLICE MISCONDUCT LAW AND LITIGATION MANUAL THIRD EDITION  
CHAPTER 1-11 SUBSECTION 1:3

"A PLAINTIFF WHOSE FEDERAL CONSTITUTIONAL RIGHTS HAVE BEEN  
VIOLATED NEED NOT EXHAUST STATE OR ADMINISTRATIVE REMEDIES  
BEFORE BRINGING SUIT IN FEDERAL COURT UNDER SUBSECTION 1983.

1) AS THE COURT CLEARLY STATE IN MONROE. "IT IS NO ANSWER THAT  
THE STATE HAS A LAW WHICH IF ENFORCED WOULD GIVE RELIEF"

"THE FEDERAL REMEDY IS SUPPLEMENTARY TO THE STATE REMEDY,  
AND THE LATTER NEED NOT FIRST BE SOUGHT AND REFUSED BEFORE  
THE FEDERAL ONE IS INVOKED" 2)

17) On 7-12-04 while plaintiff was falsely arrested ,officer

Donze attempted to force plaintiff to put a mask on that was used in a crime at scene. When plaintiff refused to allow officer Donze to place a mask on, thats when officer Donze threatened and said "You fucking spic, you better cooperate with us". And futher stated "People like you ruin our city". At this time the plaintiff was terrorfied.

18) Officers claim in police report several times that plaintiff was mirandized and that plaintiff signed miranda warning card. after plaintiff informed his court appointed attorney the one of many lies by police that police are perjuring themsevles and fabricating their original police report, thats when officers at statement suppression hearing dated 2-17-05 changed their story and said "Mr. Ribeiro refused to sign miranda warning card".

19) When plaintiff took stand in his own defense at said hearing when plaintiff was going to tell the court of the conflicting statements by police, the plaintiff was rudely cut off by his own attorney by a "shushing" sound, plaintiff was not able to tell the court of police perjury.

20) This is when the plaintiff knew that his defense attorney was working with the prosecutors in the intentional railroading of his client. Plaintiff filed a motion to dismiss inept attorney but said motion was denied. And here plaintiff sits wrongfully convicted for a crime that he did not commit. Plaintiff was prejudiced at criminal trial because of plaintiff filing this civil action. Plaintiff was the victim of police misconduct, prosecutorial misconduct, and railroaded by the superior court judicial system. When plaintiff gets this case over turned and dismissed on appeal, plaintiff will then have merit to include the commonwealth back in this civil action.

21) C.A. (CAL) 1996, "IN DETERMINING WHETHER LAW ENFORCEMENT OFFICER IS ENTITLED TO QUALIFIED IMMUNITY, COURT MUST CONSIDER WHETHER LAW GOVERNING OFFICERS CONDUCT WAS CLEARLY ESTABLISHED AND WHETHER A REASONABLE OFFICER COULD HAVE BELIEVED THAT HIS CONDUCT WAS UNLAWFUL UNDER THAT LAW"

ACOSTA V. CITY AND COUNTY OF SAN FRANCISCO,  
83 F.3d 1143, AS AMENDED.

22) The plaintiff does not mean to bring up issues that might not directly pertain to this civil action. However, the plaintiff is tempting to give the court an insight on some of the violations and injustices that mounted to plaintiffs false and wrongful conviction. Plaintiff was prejudiced at criminal trial because of plaintiff filing this civil action.

#### CLOSING

23) The plaintiff humbly requests that this court reconsider the inclusion of LT. Micheal Higgins as a defendant in this action, reason being that the plaintiffs fundamental civil and constitutional rights that were clearly established.

Plaintiffs due process, equal protection of laws, miranda, telephone and many other rights were totaly disregarded by arresting officers wanton misconduct.

The plaintiff hopes and prays that this court allow plaintiffs claim as a claim with merit.

The plaintiff would like this civil action to be a prophalactic measure to prevent further police misconduct, which is an on going dilemma in police departments.

Respectfully submitted

David Ribeiro, Pro Se  
Plaintiff.

sign

date

*David Ribeiro*  
July 16, 2005  
7-16-05

~~CERTIFICATE OF SERVICE~~

I David Ribeiro, pro se plaintiff certifies that on the date below have mailed copies of enclosed motion to defendants attorneys via u.s. mail service to the addresses below.

CLERK OF COURT  
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July 16, 2005 *David Ribeiro*